

Montana Water Court
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FILED
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Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41K-0001-R-2022
White, Eugene
5.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
SUN RIVER BASIN (41K)

CLAIMANT: LF Ranch MT LLC

OBJECTOR: LF Ranch MT LLC

CASE 41K-0001-R-2022
41K 3639-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

All water right claims that appeared in the Preliminary Decree for Sun River (Basin 41K) were subject to "issue remarks" resulting from pre-decree examination by the DNRC, objections, and counterobjections. Claim 41K 3639-00 received a self-

objection from LF Ranch MT LLC (“LF Ranch”) as well as issue remarks during the DNRC’s review of the claims.

The claim was consolidated into Case 41K-0001-R-2022 to resolve the self-objection and issue remarks.

FINDINGS OF FACT

1. Claim 41K 3639-00 received the following substantive issue remark:

THE CLAIMANT FILED AN OBJECTION AND SUPPORTING DOCUMENTS ON JANUARY 2, 2002 STATING THAT THE CORRECT PRIORITY DATE FOR THIS CLAIM IS DECEMBER 31, 1945. THIS OBJECTION WILL BE HEARD DURING ADJUDICATION OF THE PRELIMINARY DECREE FOR THIS BASIN.

2. On September 6, 2022, LF Ranch filed a *Response* stating that LF Ranch agreed that the priority date should be modified from May 25, 1973, to December 31, 1945, as stated in the self-objection filed by former claimant Sharen S. Wenz. The *Response* goes on to describe the history of the self-objection filed in 2002 by Ms. Wenz who was the daughter of the original filers of the Statement of Claim Gilman and Susanne Mirehouse. Supporting the self-objection is an attached affidavit from Norbert W. Artz, a longtime rancher in the area, who asserts in his affidavit that the Mirehouses watered cattle from Elk Creek sin “at least 1945.” Additionally, the *Response* requests that the type of right element be changed from “filed” to “use” to bring the claim into historical conformity. The *Response* states that upon the Court’s acceptance of the proposed modifications, LF Ranch’s objection, as well as the issue remark, would be resolved.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.
2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

CONCLUSIONS OF LAW

1. Based on the information contained in LF Ranch’s *Response*, coupled with the information contained in Ms. Wenz’s self-objection, the priority date should be modified as described in Finding of Fact No. 1 and the type of right changed from “filed” to “use.” These modifications resolve the self-objection and issue remark, and the issue remark should be removed from the claim.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

A post decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K**

Water Right Number: 41K 3639-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LF RANCH MT LLC
PO BOX 6196
DENVER, CO 80206 0196

Priority Date: DECEMBER 31, 1945

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: ELK CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSW	10	19N	7W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSW	10	19N	7W	LEWIS AND CLARK